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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR
Original Application No.844 of 2002

Jabalpur, this the 10th day of January, 2003

Hon'ble Mr. Justice N.N. Singh- Vice Chairman
Hon'ble Mr. R.K. Upadhyaya- Member (Admnv.)

Laxman Kumar Mishra son of
Shri Rampratap Mishra aged
36 years at present working
Gramin Dak Sevak Mail Carrier
Branch Post Office, Lagargaon
District Satna (M.P.)

-APPLICANT

(By Advocate- Shri Yogesh Dhande)

Versus

1. Union of India through its
Secretary, Department of Post
and Telegraph, New Delhi.
2. Chief Post Master General
Chhatisgarh Circle, Raipur (CG)
3. Superintendent of Post Office
Satna (M.P.)
4. Assistant Superintendent of Post
Office Satna Sub Division Satna (MP)

-RESPONDENTS

(By Advocate- Shri K.N. Pethia)

O R D E R

By R.K. Upadhyaya, Member (Admnv.):

The applicant has claimed following reliefs in this

O.A.:-

- "(a) To direct the respondents to reinstate the applicant with all the consequential benefits and to quash order dated 11.11.2002 (Annexure A/5).
- (b) To grant any other relief that this Hon'ble Tribunal deemed fit and proper in the facts and circumstances of the case. "

2. It is stated by the applicant that he has been working on the post of Gramin Sevak Mail Carrier, Branch Post Office, Lagargaon District Satna (M.P.). The applicant claims that respondent No.4, Assistant Superintendent of Post Office Satna Sub Division Satna issued a notification

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dated 6.5.1998 (Annexure A/1) for filling of the post of Extra Departmental Mail Carrier (E.D.M.C.), Lagargaon. In this notification, it was stated that the post was reserved for Scheduled Tribe Caste candidates. This notification was endorsed to Employment Exchange, Satna with a request that atleast three persons fulfilling the required eligibility criteria be sponsored. As special note attached to this notification, it was mentioned that if three suitable candidates of Scheduled Tribe were not available, candidates of three of other reserved category may be sponsored. In case, even such candidates were not available, the name of candidates of general category may be sent. The applicant claims that he being most suitable candidate for the post of E.D.M.C. was issued appointment letter dated 7.10.1998 (Annexure A/2). This appointment letter inter-alia stated that the applicant was appointed provisionally. It was also stated that "his employment as EDMC Lagargawan B.O. is temporary and shall be in the nature of contract liable to be terminated by him or by the undersigned notifying the other in writing and that his conduct and service shall also be governed by the Posts and Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964 as amended from time to time. It is claimed by the applicant that he received the charge of EDMC on the same day, i.e., 7.10.1998. The applicant further states that a notice dated 28.9.1999 under Rule 6(a)&(b) of P&T Extra Departmental Agents (Conduct & Service) Rules, 1964 was issued to him. (hereinafter referred to as 'the EDA Rules'). Aggrieved by the said termination notice dated 28.9.1999 the applicant filed O.A.No.677/1999 before this Tribunal. By an order dated 16.11.1999 this Tribunal disposed of the said O.A. directing the applicant to send a reply to the show cause notice and the respondent no.2 in that

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O.A. i.e. the Assistant Superintendent of Post Office, Satna Sub-Division was directed not to terminate the services of the applicant from the post on which he was working as on the date of the order of this Tribunal. The applicant further claims that now a fresh notice under Rule 8(1) of Gramin Dak Sevak (Conduct and Employment) Rules, 2001 (hereinafter referred to as 'the GDS Rules') dated 11.11.2002 (Annexure-A-5) has been issued which states that the services of the applicant shall stand terminated with effect from the date of expiry of period of one month from the date of receipt of the said notice. According to the applicant he has completed more than four years of continuous service from the date of his initial appointment on 7.10.1998, therefore, the provisions of Rule 8(1) ibid do not apply in his case. According to the applicant he being a holder of civil post under Article 311(2) of the Constitution of India cannot be subjected to termination of his service by notice of one month.

2.1 At the time of hearing, the learned counsel of the applicant further stated that the word 'provisional' mentioned in the appointment letter dated 7.10.1998 has now been deleted as per subsequent order dated 8.1.2000 issued by respondent no.4, Assistant Superintendent of Post Offices.

3. The learned counsel of the respondents stated that the initial appointment of the applicant itself was in violation of standing orders of Post Master General, Raipur as per his circular letter dated 12.8.1998 (Annexure-R-1). This circular letter stated that "divisional heads/S.D.I/ASBOs should not fill up vacant posts of EDAs without the express approval of PMG in each case". The learned counsel of the respondents stated that the so called appointment letter dated 7.10.1998 was issued by the Assistant Superintendent of Posts Offices, Sub Division, Satna, who was not the appointing authority. According to the

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learned counsel, the Superintendent of Post Offices is Officer-in-Charge of the Division and only he was authorised to appoint the applicant. If the appointment was made by respondent no.4, approval of higher authorities for the same should have been obtained, particularly, in view of the directions of the Post Master General dated 12.8.1998 (Annexure-R-1). It was also pointed out by the learned counsel of the respondents that this Tribunal by the order dated 16.11.1999 issued the directions, without affording an opportunity to the respondents and the respondents were not able to place facts before the Tribunal. It was also explained by the learned counsel of the respondents that the initial order dated 28.9.1999 was notice-cum-termination order, as it contained the stipulation that the applicant's services will stand terminated after the expiry of one month from the date of receipt of the said notice. The learned counsel stated that the period taken from the date of the order of Tribunal on 16.11.1999 cannot be counted for continuous service of three years. Therefore, the applicant's services can be terminated by giving one month's notice.

4. We have heard the learned counsel of both the parties and have perused the material available on record.

5. This Tribunal by order dated 16.11.1999 in OA 677/99 had ordered as follows:-

"3. Duly considered submissions of the applicant this O.A. is disposed of with the directions that if the applicant sends reply to the show cause notice to respondent no.2 within 3 days of receipt of this order, alongwith a copy of this order, in that event, respondent no.2 shall have to dispose of the same by speaking order and communicate the decision thereof to the applicant promptly within 6 weeks. Till such time, the reply to the show cause notice is disposed of by the respondents, it is directed that the applicant may not be terminated from the post on which he is working as on date. If the grievance of the applicant is not remedied, he will be at liberty to agitate his grievances afresh."

5.1 During the course of hearing, it was not explained

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by either of the counsel as to whether the respondents ever intimated any decision on the reply to the show cause notice issued by respondent no.4. However, it is clear that the order of this Tribunal was passed as early as on 16.11.1999 and the respondents were directed to pass a speaking order and also communicate the decision thereof to the applicant within six weeks. There is nothing on record to suggest as to when the decision, if any, was communicated to the applicant, as per order of this Tribunal. However, it is rather strange that the respondents have taken nearly two years while issuing the impugned notice dated 11.11.2002 (Annexure-A-5). From the endorsement to this notice it appears that some instructions must have been issued by the Superintendent of Post Offices, Rewa Division with reference to his letter dated 25.10.2002.

5.2 Regarding the argument of the learned counsel of the respondents for non-completion of three years period in view of this Tribunal's order in OA 677/1999, it is to be noted that the order in OA 677/1999 was passed on 16.11.1999 in which it was directed that the decision was to be communicated within six weeks from the date of receipt of reply of the applicant. If the period from 16.11.1999 to the date of expiry of six weeks was excluded, even then the applicant had completed more than three years service. Therefore, this argument of respondents fails.

5.3 The notification dated 6.5.1998 (Annexure-A-1) for filling up the post of E.D.M.C. was by a scheduled tribe candidate, failing which by scheduled caste candidate and failing both, by candidate of general category. The respondents have not brought on record to indicate that the initial selection of the applicant, even though made provisionally, was not in accordance with the terms and conditions of the notification for filling

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of the post on which he was appointed. It is noticed from the 'Schedule of Appointing Authorities' reproduced below Rule 27 of of the EDA Rules, Swamy's Compilation Third Edition, 1987 that for the post of E.D.M.C. the Assistant Superintendent of Post Offices was a competent appointing authority. Therefore, the objection raised by the learned counsel of the respondents about the competence of the appointing authority is rejected.

5.4 If the selection of the applicant was as per the prescribed procedure, the only irregularity appears to be not obtaining the approval of the Post Master General. In all such cases, the ex-post facto approval could have been obtained. In the circumstances, we direct respondent no.4 i.e. the Assistant Superintendent of Post Offices, Satna Sub Division, Satna to move for approval of the Post Master General in terms of his circular letter dated 12.8.1998 (Annexure-R-1).

6. In the result, this Original Application is allowed. The impugned notice dated 11.11.2002 (Annexure-A-5) is set aside. The respondents are directed to comply with the direction as in the preceding paragraph within a period of three months from the date of receipt of a copy of this order. In the facts and circumstances of the case, the respondents are directed to bear their own costs.

(R.K. Upadhyaya)
(R.K. Upadhyaya)
Member (Admnv.)

(N.N. Singh)
(N.N. Singh)
Vice Chairman.

rkv.

Issued
on 13.1.03

पूजाकर्म सं ओ/व्या..... जयलक्ष्मी, दि.....
पतिविरहित अनाथ बालिका

(1) सहायक अधीक्षक, पोस्टल, जयलक्ष्मी, दि.....

(2) सहायक अधीक्षक, पोस्टल, जयलक्ष्मी, दि.....

(3) सहायक अधीक्षक, पोस्टल, जयलक्ष्मी, दि.....

(4) सहायक अधीक्षक, पोस्टल, जयलक्ष्मी, दि.....

सूचना एवं प्रचारक, जयलक्ष्मी, दि.....

(N.N. Singh)
उप अधीक्षक

13/1/03

y. shandale - Adv
R N Pethi - Adv
Asst. Super Post Office Satna